IN THE HIGH COURT OF BOMBAY AT GOA

WRIT PETITION NO. 565 OF 2006

M/S BOSHAN DEVELOPERS PVT.LTD.,THROUGH ITS DIRECTOR SHRI AMIR SADASHIV GAITONDE ....Petitioner

Versus

MR. CARLOS TAVORA AND ANR., ...Respondents

Mr. M. B. D'Costa, Senior Advocate with Mr. John Lobo, Advocate for the petitioner.

Mr. S. D. Lotlikar, Senior Advocate with Mr. V. Palekar, Advocate for respondent No.1.

Mr. S. Padiyar, Advocate for respondent No.2.

Coram:- S.K. SHAH, J.

Date:- 7th February, 2007

P.C.

Heard learned Counsel on both sides. By this writ petition, the petitioner challenges the order passed by the lower appellate Court in Misc. Civil Appeal No.45/06.

The trial Court had granted the temporary injunction in favour of the petitioner and directed the defendant No.1 to remove the gas cylinders and ornamental vases placed on the parking area and further directed not to do any construction or digging excavating in the suit property. This order was challenged before the District Court by way of Misc. Civil Appeal No.45/06. The Addl. District Judge dismissed the said Misc. Civil Appeal.

The Additional District Judge, while dismissing the appeal, made certain observations and they are as follows :

" For the reasons stated above the Ld.Civil Judge Senior Division Mapusa has not erred in restraining defendant no.1 from digging trenches in the suit premsies or directing defendant no.1 to remove the decorational flower vases and gas cylinders for (from) the parking space."

The learned Counsel for the petitioner states that these observations are creating problem in getting the order of the trial Court executed.

The observations seem to have been erroneously made because the gas cylinders are not in parking space at all. Be that as it may, the final and operative order of the Addl. District Court was dismissal of the appeal which, obviously, has an effect of confirming the order of temporary injunction passed by the trial Court. It is that order which the petitioner is seeking to execute. The learned Counsel for the petitioner states that he has no grievance with the operative part of the Addl. District Court.

The erroneous observations made by the Addl. District Court in the body of the Judgment should not come in the way of the petitioner in getting the order, passed by the trial court, executed. These are, obviously, the erroneous observations made by the Addl. District Court. However, since the petitioner is not aggrieved by the final order of the Addl. District Court, this writ petition would not be maintainable and, therefore, the writ petition stands dismissed.

S.K. SHAH, J.

ssm.